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Opinion of the European Economic and Social Committee on Taxation of cross-border teleworkers globally and the impact on the EU

(own-initiative opinion)

(C/2024/2479)

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1. **Conclusions and recommendations**

1.1. Over the last decade, globalisation and digitalisation have opened up new opportunities to work remotely. The COVID-19 pandemic brought about an unprecedented change in the lives of both workers and businesses, leading to an exponential rise in teleworking.

1.2. With the new technology, the exact same work can be carried out without the need to be physically present. This also means that many more people are able to work remotely across borders and the number of cross-border teleworkers has increased drastically.

1.3. The current rules address both corporation and employment taxation. The OECD has for many decades strived to establish commonly accepted international tax principles in its *OECD Model Tax Convention on Income and on Capital*. These rules and agreements have then been applied by Member States in the EU and have formed the basis for rules in the *United Nations Model Double Taxation Convention*.

1.4. During the pandemic, the OECD Secretariat issued guidelines stipulating that a cross-border worker unable to commute to the country of the employer should be taxable in the country of the employer, even though the work was performed remotely. The number of days allowed for such remote work is often limited to some 20 days per year. In its opinion Taxation of cross-border teleworkers and their employers ([1]), the European Economic and Social Committee (EESC) recommended that the limit should be extended to two days a week, or 96 days per year, without any tax consequences.

1.5. To simplify, with the present rules, the agreed principle of taxation rights is that the country in which the work is performed has the right to tax the employment income. If, with the use of electronic means, the work can now be performed remotely, a possible solution may be that the employer's country of residence should, as a principle, have the right to tax. A teleworker should, however, not suffer any discriminatory tax treatment compared to cross-border workers who perform their work in the country of the employer.

([1]) OJ C 443, 22.11.2022, p. 15.

1.6. Another possibility would be to tax the employee in his/her country of residence the same way as the self-employed are taxed. However, an argument against such a regime is that since the work is still performed for the employer in country B, the right to tax employee income should remain in country B, i.e. the country of the employer. After all, the wage costs are deductible for the calculation of the corporate tax liable in country B ([2]).

1.7. The EESC therefore believes that taxation of employee income as wage income in the employer's country of residence is the preferred option. Such a regime would make things simpler for employees and could also be attractive for employers. In order to compensate for loss of revenue in the employee's country of residence, a revenue sharing mechanism would likely be required.

1.8. The EESC proposes that the revenue authorities may divide the income between the countries by applying data on actual individual presence in the states concerned (reported by the employer to the tax authority in its country of residence, thereby acting as a one-stop shop) or using some macroeconomic aggregate key.

2. **General comments**

2.1. Over the last decade, globalisation and digitalisation have opened up new opportunities to work remotely. The COVID-19 pandemic brought about an unprecedented change in the lives of both workers and businesses and led to an exponential rise in teleworking.

2.2. During the pandemic, businesses and employees made major efforts to digitalise their daily activities (e.g. online meeting tools), accelerating an already ongoing digitalisation process leading to a new employment landscape. The observed changes have been undertaken by both the private and public sector ([3]).

2.3. With the new technology, the exact same work may be carried out without the need to be physically present. This also means that many more persons can work remotely across borders and the number of cross-border teleworkers has increased drastically. Current estimates on teleworking suggest that around 22 % of the EU workforce is now doing some form of telework ([4]).

2.4. Working remotely has indeed proven to be efficient for both workers and employers ([5]). Therefore, the possibility to work outside the office for several days a week, or even on a stable basis, is now an established and fast-growing reality.

2.5. In a few years, hundreds of millions of persons globally may work remotely and many of them cross-border from their home countries, or even from a series of third countries (so called Digital Nomads).

([2]) With the present rules, consultancy fees for a self-employed person are also deductible when calculating taxable corporate profits in country B even though the consultancy fee is taxable income in country A.

([3]) Eurofound study, *The Rise in Telework: Impact on Working Conditions and Regulations*, p. 55. 'During the pandemic, the public services and administration, the education and the health and social work sectors experienced a notable increase in sectoral agreements on telework. Most sectoral agreements include provisions on the formal procedure of the introduction of telework, as well as on access to telework'.

([4]) Eurofound study, *The Rise in Telework: Impact on Working Conditions and Regulations*, p. 55. 'In 2008, less than 8 % of employees were working from home "sometimes" or "usually". This share gradually increased over the years, reaching 11 % in 2019, just before the crisis. Following the start of the pandemic, the frequency of teleworking increased abruptly to 19 % in 2020 and rose further to 22 % in 2021. The increase was recorded mainly among employees "usually" working from home.'

([5]) Eurofound study, *The Rise in Telework: Impact on Working Conditions and Regulations*, p. 2. 'Employees, and to some extent employers, prefer the hybrid model of telework (partial telework or part-time telework). It has been proven that hybrid work saves on commuting time, improves work-life balance, reduces feelings of isolation, and ensures more efficient time management'.

2.6. Facilitating working remotely has not only improved the quality of life and the life-work-balance of millions of workers ([6]), but might also contribute to reducing the environmental impact of millions of commuters, in line with the objectives of the EU. Such a tendency is hence likely to continue and further evolve in the future.

2.7. As shown, there are many positive aspects of working remotely. However, a trend with an increasing number of people who are working remotely also represents major challenges from a tax perspective. The tax rules need to be updated so that they reflect how work is carried out in the current work environment and how it is likely to be done in the future. It is also important to recognise that with the choice of location of an individual, follows the right to benefit from public expenditure, which is mainly paid for by taxes. Taxation and representation in policymaking is a well-established principle that should be respected.

2.8. Addressing the issue of taxation of cross-border teleworking is likely to entail the need to revise bilateral as well as multinational agreements. One such agreement has recently been updated between Switzerland and France for frontier workers of the canton of Geneva (Switzerland) living in France. Under the agreement, cross-border teleworking not exceeding 40 % of total working time, will not impact the workers' tax situation. Frontier workers living in France and working in Geneva will then continue to be subject to taxation in Geneva in the form of wage taxes withheld at source. To compensate for the loss of revenue in France, the agreement entails a revenue sharing mechanism, under which Geneva will pay compensation of 3,5 % of the tax revenue to France.

2.9. A multilateral agreement currently under discussion in the Nordic Council was presented at the public EESC hearing 'Taxation of cross-border teleworkers — possible solutions' in Tallinn on 4 July 2023. It outlines how the principal employer files one Nordic withholding form for a Nordic resident working in three Nordic countries and also presents a revenue sharing mechanism among the Nordic countries ([7]).

2.10. There are of course benefits to finding country-specific solutions in order to allow for remote cross-border teleworking, but it would be desirable to have agreements based on generally accepted principles. If not, a complex set of international rules and applications is likely to emerge, leading to fragmentation.

2.11. The OECD has for many decades strived to establish commonly accepted international tax principles in its *OECD Model Tax Convention on Income and on Capital*. These rules and agreements have then been applied by Member States in the European Union and have formed the basis for rules in the *United Nations Model Double Taxation Convention*.

2.12. The current rules address both corporation and employment taxation. With regard to the taxation of company profits, international teleworkers may run the risk of inadvertently creating a PE for the company in a country other than its own. If a PE were established in another country, the company, in addition to the discussion on how to tax the employment income linked to cross-border teleworking, would be forced to accurately divide its corporate income between the two locations, and thus be subject to different filing obligations and tax liabilities.

2.13. For taxation of the employee, Article 15 of the *OECD and UN Model Conventions* ([8]) addresses whether salaries, wages and other forms of remuneration shall be taxable in the country where the employment is exercised or in another contracting state. However, if the employee is present in another state for less than 183 days over a twelve-month period, and the employer does not have a PE in the state where the work is performed, the country of the employer retains the right to tax the income of the employee. Apart from employees, there are also special rules in the Model Conventions for directors, entertainers, sportspersons and students ([9]).

([6]) Eurofound study, *The Rise in Telework: Impact on Working Conditions and Regulations*, p. 55.
([7]) EESC public hearing on Taxation of cross-border teleworkers — possible-solutions.
([8]) OECD, *Articles of the model convention with respect to taxes on income and on capital* and *Commentaries on the articles of the model tax convention*.
([9]) OECD, *Articles of the model convention with respect to taxes on income and on capital*, articles 16, 17 and 20.

2.14. When a contracting state has the right to tax remuneration of the employee, it often imposes obligations on the employer to withhold wage/payroll taxes/fees.

2.15. During the pandemic, the OECD Secretariat issued guidelines stipulating that a cross-border worker unable to commute to the country of the employer should be taxable in the country of the employer, even though the work was performed remotely. The number of days allowed for such remote work is often limited to some 20 days per year. In its opinion on *Taxation of cross-border teleworkers and their employers* ([10]) from July 2022, the EESC recommended that the limit should be extended to two days a week, or 96 days per year, without any tax consequences.

2.16. This opinion also flagged up the risk of double taxation of employees teleworking across borders, encouraging the Commission to consider whether a 'one-stop shop', similar to the one embraced in the VAT area, could be a possibility. The present opinion aims to refine the EESC approach to the matter at hand, putting forward an additional contribution to the ongoing debate.

2.17. The treatment of social security contributions is also important for engaging in cross-border teleworking. Even though these contributions may be linked to the income, social security is not dealt with in this opinion and labour market regulations are not addressed either.

3. **Specific comments**

3.1. To simplify, with the present rules, the agreed principle of taxation rights is that the country in which the work is performed has the right to tax the employment income. If, with the use of electronic means, the work can now be performed remotely, a possible solution may be that the employer's country of residence should, as a principle, have the right to tax. A teleworker should, however, not suffer any discriminatory tax treatment compared to cross-border workers.

3.2. Consider a simplified example; a person commutes five days a week from country A to the office and premises of the employer in country B. Under the present rules, the wage income is taxed in country B. If the person no longer commutes but works from his or her home in country A, he is taxable in country A. The work performed for the employer in country B is, however, the same as before but the right to tax that income shifts from country B to country A. This is only due to technological developments and the changing nature of the labour market.

3.3. It may be noted that if the work is instead carried out as a self-employed consultant to the employer and the consultant resides in country A but performs the duties remotely, there is no change in where tax is levied compared to today. Country A, where the firm of the consultant is registered, has the right to levy taxes. There will therefore be a close correlation between income earned, taxes and use of public services. One possibility would be to treat employees for taxation purposes the same way as the self-employed and levy taxes in country A.

3.4. However, an argument against taxing employees in the same way as a self-employed person is that since the work is still performed for the employer in country B, the right to tax employee income should remain in country B, i.e. the country of the employer. After all, the wage costs are deductible for the calculation of the corporate tax liable in country B ([11]). Such a change of taxation rights from today's situation would have several consequences.

3.5. There is however one important issue that needs to be addressed if the taxation is to remain in country B. Under such a regime, country A would not receive any wage income tax revenue from this individual to finance public services enjoyed by him/her unless there is some kind of revenue sharing. Whether there will be a loss of tax revenue for an individual country depends on the net flow of cross-border workers. To the extent that the number of cross-border teleworkers and their wage bill add up to the same number, countries A and B will be in the same net revenue position irrespective of in which country the income is taxable. This may, however, not be the case if the countries are of different sizes and their attractiveness to employers and employees varies. The business climate and the level of salaries paid will be an important factor, as always, for tax revenues.

([10]) OJ C 443, 22.11.2022, p. 15.

([11]) With the present rules, consultancy fees for a self-employed person are also deductible when calculating taxable corporate profits in country B even though the consultancy fee is taxable income in country A.

3.6. For the employee, the tax burden may be different depending on whether they are taxed on their wages in country A or B. If the tax rates are similar between the two countries, the effect is likely to be small. However, given country-specific tax rules, the right to deduct costs from your tax bill, like mortgage costs, may be affected. It may be necessary to have a taxable income in order to be allowed a deduction ([12]).

3.7. In a globalised and digitalised world, workers can more freely choose a country of residence independently of where their employer is located. With mobility follows difficulties for tax authorities to determine the country of residence. ([13]) It is probably easier to determine where the company for which the work is performed is located, than where the individual worker is located ([14]).

3.8. Platforms are frequently used for obtaining customers. The platform is often not serving the function of being an employer and the location of the person performing the work is therefore determining in which country income should be taxable, irrespective of where the platform is registered. Platforms should be duly distinguished from digital nomads. Digital nomads may work from many countries during the course of a year. They may be attracted by special visas issued by countries or other targeted beneficial tax treatment, creating tax competition between countries.

3.9. The countries may decide to share tax revenues thereby acknowledging that the country of residence provide services like public schools, healthcare, etc. A revenue sharing mechanism can be created in several ways. The revenue authorities may divide the income between the countries by applying data on actual individual presence in the states concerned (reported by the employer to the tax authority in its country of residence, thereby acting as a one-stop shop) or using some macroeconomic aggregate key.

3.10. Countries will continue to engage in tax competition. Digital nomads will take the tax system into account when choosing where to live and work. Since the obstacles to finding gainful employment are drastically reduced when there is less need to physically relocate a family, the importance of labour taxation is likely to increase.

3.11. The debate so far in international fora has been heavily focused on the location and taxation of corporations, even though corporate tax revenues are typically only a few percentage points of GDP. The tax revenues from labour income, including indirect taxes like VAT, are often some 20 times higher than revenues from corporation taxes. High corporation taxes reduce corporate investments and the establishment of new business sites and therefore also tax revenues from labour income, but the effect of the changing labour market with remote working possibilities will become much more pronounced in the years to come.

3.12. The new technology allows high-skilled workers in developing countries (and in developed countries) to retain their residency while at the same time working for an international firm or organisation in a more developed country. Consumption taxes and taxes on properties will then be paid by such a person in the developing country. The taxation of labour income could increase if employees are treated as self-employed for tax purposes. If taxes are collected in the country of the employer, it would mean that the revenues would be unchanged compared to today since the only difference would be the physical presence of the employee. While a physical move was required in the past to obtain the income, it is no longer the case. If in addition revenue sharing is introduced, the country of residence would likely be a net gainer in terms of tax revenues.

3.13. The option of treating employee income the same way as income for self-employed persons could perhaps be relatively easy to implement ([15]) but taxation of employee income as wage income in the employer's country of residence is the preferred option. Such a regime would make things simpler for employees and could also be attractive for employers. In order to compensate for loss of revenue in the employee's country of residence, a revenue sharing mechanism would likely be required.

([12]) A standardized tax credit could still be applied.

([13]) It is a similar situation as with the relocation of intangible assets in the corporate sector, which triggered much of the work at the international level on Base Erosion and Profit Shifting (BEPS). The agreement on Amount A in Pillar 1 of the Inclusive Framework and the OECD, with profit sharing, has been presented.

([14]) An argument for having a corporation tax rather than taxing shareholders and workers was that it was easier to keep track of companies and collect taxes at that level.

([15]) The requirements which have to be met in order to be recognized as a firm (like profit motive, durability and having more than one customer, etc.) would probably have to be changed.

3.14. Designing a system of taxation of employee remuneration in the employer's country of residence could take various forms. One way could be introducing alternative model provision(s) in the commentary of the OECD Model Convention to be used by countries in bilateral negotiations. This would facilitate a more uniform set of rules.

Brussels, 14 February 2024.

The President
of the European Economic and Social Committee

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